

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
FCC MAIL SECTION

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IN REPLY REFER TO:

8920-DJF

RECEIVED BY

Mr. James L. Baughn
Washtenaw Broadcasting Company, Incorporated
Radio Station WAMX(FM)
24 Frank Lloyd Wright Drive
P.O. Box 8677
Ann Arbor, MI 48107

In re: WAMX(FM); Ann Arbor, MI
Washtenaw Broadcasting Company, Inc.
BPH-8904101C (Old file No.)
BPH-8912211J (New file No.)

Dear Mr. Baughn:

This is in reference to the above-captioned minor change application filed to decrease the effective radiated power from 3.0 kW to 2.1 kW, increase the height above average terrain from 79 meters to 116 meters and change the location of the transmitter site. On July 3, 1989 The Regents of The University of Michigan filed an informal objection against the minor change application. The application was returned by the Chief of the FM Branch by letter dated November 9, 1989 for failing to provide sufficient information to justify waiver of 47 CFR § 73.207(a) with respect to short-spacing to stations WWWW(FM), Detroit, Michigan and WGPR(FM), Detroit, Michigan. Specifically, the staff's letter indicated that your proposal had not systematically demonstrated that all non-short-spaced or lesser-short-spaced sites were unavailable and that the proposed increase in the short-spacing (ranging from 2.44 km to 2.63 km) was not de minimus.¹ As a result, application BPH-8904101C was dismissed and the informal objection filed by The Regents of The University of Michigan was granted "in part, to the extent indicated."

¹ Application BPH-8904101C proposed an antenna site short-spaced to WWWW(FM), Detroit, Michigan by 11.2 km and short-spaced to WGPR(FM), Detroit, Michigan by 12.5 km.

On December 21, 1989 you filed a petition for reconsideration of the staff's action. That petition for reconsideration reiterated the arguments in support of the requested waiver of 47 CFR § 73.207(a) as set forth in the original application and provided additional information intended to demonstrate the necessity for locating at the proposed site. The pleading also requested that the application be reinstated nunc pro tunc and granted. On March 22, 1990 you submitted a supplement to the petition for reconsideration bolstering the showings previously made to demonstrate the lack of lesser or non-short-spaced sites. On August 22, 1990 you submitted a request for expedited action on the petition for reconsideration.

In order to be favorably considered, a petition for reconsideration must establish that the action taken by the Commission or designated authority for which reconsideration is sought involved findings of fact and/or conclusions of law which were erroneous. See 47 CFR § 1.106(d)(2). Your petition does not establish that such errors were made; rather, supplemental information was provided which was not available to the staff at the time the original application was processed. Consequently, your petition for reconsideration will not be granted and therefore your application cannot be reinstated nunc pro tunc. However, for administrative convenience and to avoid unnecessary paperwork, we are associating your petition for reconsideration and supplement thereto with the original application BPH-8904101C and assigning the new application, thus created, a file number based upon the date of the receipt of the petition for reconsideration. This new application has been assigned file number BPH-8912211J.

In this regard, we note that your original application was filed prior to the June 26, 1989 effective date of the rules adopted in MM Docket 87-121, 4 FCC Rcd 1681 (1989). However, the return of that application, the filing of the petition for reconsideration, our action herein denying reinstatement nunc pro tunc and associating the various submissions to create a newly numbered application all occurred following the effective date of those rules. Accordingly, since certain opportunities present at the time of the filing of your original application would otherwise not be available to you due to the intervening imposition of those new rules, your renumbered application will be processed under the rules in effect as of the date of your original filing. We note that application BPH-8912211J is a first come/first served minor change application which does not involve a conflict with any application filed between the original filing date and the date of this action. Accordingly, for good cause on our own motion, the newly created application IS ACCEPTED FOR TENDER.

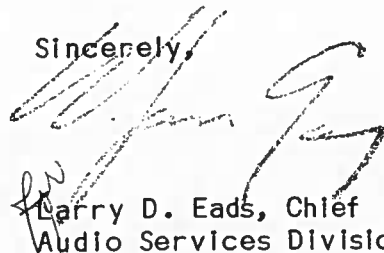
As indicated previously, WAMX seeks authority to operate from a site that will be short-spaced to licensed WWWW(FM) by 11.2 km, to a construction permit held by WWWW(FM) by 10.8 km, and to licensed WGPR(FM) by 12.5 km. This relocation will increase the short-spacing by 2.44 km, 2.05 km, and 2.63 km to the WWWW(FM) license, WWWW(FM) construction permit, and WGPR(FM) license, respectively. A request for waiver of 47 CFR § 73.207(a) has been made citing the unavailability of other non or lesser-short-spaced

sites. In support of this waiver request, you have provided exhibits (including maps) that clearly demonstrate the areas considered. Additionally, you explain the practical impossibility of uncovering any available alternative sites for sale or lease by submitting documentation prepared by many Michigan realtors describing the unavailability of land suitable for the erection of a radio tower. Further, it was determined to be likely that most of these parcels of land, even if available, would require rezoning which would almost certainly be opposed by adjacent landowners. In addition, mounting on the existing WIQB tower, located in Lodi Township, would also be an impossibility because presently the tower is at its capacity. Having carefully considered your request for waiver and supporting documentation, we find that waiver, in this unique instance, is warranted.

As stated previously, on July 3, 1989 The Regents of The University of Michigan filed an informal objection to application BPH-8904101C. The informal objection claims that approximately 50 percent of the land within the 115 dBu blanketing area is University of Michigan property. The distance to the 115 dBu blanketing is 0.571 kilometers (0.355 miles). The objector's main concern is the effect of the application's proposed radiated field upon radio station WUOM(FM)'s studios, University media facilities and University laboratories located within the blanketing area. With respect to WUOM(FM)'s studios, we note that should blanketing interference problems occur, 47 CFR § 73.318 entitled "FM blanketing interference" will adequately address the concerns of The Regents of The University of Michigan. 47 CFR § 73.318 states, in pertinent part, licensees who request facilities modifications and are issued a new construction permit must resolve all complaints of blanketing interference. Resolution of complaints shall be at no cost to the complainant for one year following the commencement of programming at the modified facility. However, concern still remains about other possible disruptive effects within the blanketing area that will encompass most of The University of Michigan campus, including research facilities and laboratories, an electronic music studio, television and radio production studios, classrooms, auditoriums, audio recording studios, language laboratories, satellite downlinks, television translator station W67AJ (operated by Eastern Michigan University) and other audio-visual media facilities. With regard to these facilities, 47 CFR § 73.318 states that the blanketing protection requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas or antenna booster amplifiers. Mobile receivers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs) are also excluded. For such equipment located within the blanketing contour which are not explicitly covered under the rule, WAMX(FM), as a Commission licensee, will nonetheless be responsible for providing such technical information and/or assistance to The University of Michigan in resolving instances of electrical interference as appropriate. Accordingly, the informal objection filed by The Regents of the University of Michigan IS HEREBY DENIED.

Our review concludes that WAMX has adequately demonstrated that suitable non or lesser-short-spaced sites do not exist. Consequently, waiver of 47 CFR § 73.207(a) is found to be warranted and in the public interest. Therefore, the requested waiver of 47 CFR § 73.207(a) with respect to WWWW(FM) and WGPR(FM) of Detroit, Michigan IS HEREBY GRANTED. Accordingly, minor change application BPH-891221IJ IS ACCEPTABLE FOR FILING and IS HEREBY GRANTED. These actions are conditioned upon receipt of the appropriate filing fee. See 47 CFR § 1.1110. You will be billed for the minor change filing fee under separate cover by the Commission's Fee Section. Failure to submit this fee will result in the rescission of the instrument of authorization pursuant to 47 CFR § 1.1110(a)(2).

Sincerely,



Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: Wilkinson, Barker, Knauer & Quinn
: Gallagher & Associates
: Dow Lohnes & Albertson
: The Regents of the University of Michigan